

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KEITH M. PETTY, ) NO. EDCV 12-1220 JAK (SS)  
 )  
Plaintiff, )  
 )  
v. ) MEMORANDUM AND ORDER DISMISSING  
 ) COMPLAINT WITH LEAVE TO AMEND  
PA-C SHOJAEI, PA-C MARCOS ARID, )  
 )  
MEDICATION TECHNICIAN BLIER, )  
 )  
MEDICATION TECHNICIAN ALMOND, )  
 )  
and MEDICATION TECHNICIAN )  
CHANEY, )  
 )  
Defendants. )  
 )

I.

INTRODUCTION

On July 31, 2012, Keith M. Petty ("Plaintiff"), a federal prisoner proceeding pro se, filed a civil rights complaint pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971) (the "Complaint"). For the reasons stated below, the Complaint is dismissed with leave to amend.<sup>1</sup>

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<sup>1</sup> Magistrate judges may dismiss a complaint with leave to amend without approval of the district judge. See McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991).

1 Congress mandates that district courts initially screen civil  
2 complaints filed by a prisoner seeking redress from a governmental  
3 entity or employee. 28 U.S.C. § 1915A(a). This Court may dismiss such  
4 a complaint, or any portions thereof, before service of process if the  
5 Court concludes that the complaint (1) is frivolous or malicious,  
6 (2) fails to state a claim upon which relief can be granted, or  
7 (3) seeks monetary relief from a defendant who is immune from such  
8 relief. 28 U.S.C. § 1915A(b)(1)-(2); see also Lopez v. Smith, 203 F.3d  
9 1122, 1126-27 & n.7 (9th Cir. 2000) (en banc).

## 10 11 II.

### 12 ALLEGATIONS OF THE COMPLAINT

13  
14 Plaintiff names as defendants five Federal Bureau of Prisons  
15 employees at the Federal Correctional Complex-Victorville (the "FCC"):  
16 certified physician's assistants Shojaei and Arid, and medication  
17 technicians Blier, Almond and Chaney.<sup>2</sup> (See Complaint at 2-3).  
18 Plaintiff sues all Defendants solely in their individual capacities.  
19 (See id.).

20  
21 Plaintiff alleges that on July 17, 2010, he sustained a stab wound  
22 to his face and nose for which he received approximately ten stitches at  
23 Victor Valley Community Hospital, an outside medical facility.  
24 (Complaint at 4). Upon discharge from the hospital, Plaintiff was  
25 returned to the custody of the FCC and placed in the Special Housing  
26 Unit (the "SHU"). (Id.). Plaintiff states that throughout the three

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27  
28 <sup>2</sup> With the exception of Marcos Arid, the Complaint does not  
identify any Defendants by their first name.

1 months that he was housed in the SHU, he was "denied all Medical care,  
2 medical attention, medical supplies and even medical advice[,] even  
3 after [he] submitted numerous medical request[s] & spoke[] to numerous  
4 medical staff/the defendants which are named in this complaint." (Id.).  
5 Due to the denial of care in the SHU, Plaintiff endured a "Painful &  
6 Terrible" healing process and his injury became infected, which resulted  
7 in a "permanent deformity." (Id.).  
8

9 Plaintiff seeks \$650,000 in compensatory damages, punitive damages  
10 "in the amount of three times the amount of compensatory damages  
11 awarded," and fees and costs. (Id. at 5).  
12

### 13 III.

#### 14 DISCUSSION

15

16 Pursuant to 28 U.S.C. § 1915A(b), the Court must dismiss  
17 Plaintiff's Complaint due to defects in pleading. Pro se litigants in  
18 civil rights cases, however, must be given leave to amend their  
19 complaints unless it is absolutely clear that the deficiencies cannot be  
20 cured by amendment. See Lopez, 203 F.3d at 1128-29. Accordingly, the  
21 Court grants Plaintiff leave to amend, as indicated below.  
22

#### 23 A. Plaintiff Fails To State A Claim For Deliberate Indifference To 24 Serious Medical Needs

25

26 Plaintiff claims that he suffered pain and permanent disability  
27 when he was denied medical care for three months after receiving  
28 stitches to his face and nose. (Complaint at 4). Although Plaintiff

1 lists five individual Defendants in the caption and introduction to the  
2 Complaint, he fails to allege any specific facts showing how each of  
3 these Defendants personally violated Plaintiff's constitutional rights.<sup>3</sup>  
4 (Id. at 1-3). Consequently, the Complaint fails to state a claim for  
5 deliberate indifference to serious medical needs and must be dismissed,  
6 with leave to amend.

7  
8 A defendant is liable for the denial or delay of a prisoner's  
9 medical care in violation of the Eighth Amendment only when the  
10 defendant is deliberately indifferent to the prisoner's known serious  
11 medical needs. Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006); see  
12 also West v. Atkins, 487 U.S. 42, 49, 108 S. Ct. 2250, 101 L. Ed. 2d 40  
13 (1988). A prisoner must show that the deprivation he suffered was  
14 "objectively, sufficiently serious" and that prison officials were  
15 deliberately indifferent to his safety in allowing the deprivation to  
16 take place, resulting in harm to the plaintiff. Morgan v. Morgensen,  
17 465 F.3d 1041, 1045 (9th Cir. 2006). The defendant must have  
18 "purposefully ignore[d] or fail[ed] to respond to a prisoner's pain or  
19 possible medical needs in order for deliberate indifference to be  
20 established." May v. Baldwin, 109 F.3d 557, 566 (9th Cir. 1997)  
21 (internal quotation marks omitted). "[M]ere malpractice, or even gross  
22 negligence," in the provision of medical care does not establish a  
23  
24

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25 <sup>3</sup> Exhibits to the Complaint include copies of Plaintiff's  
26 administrative grievances, the prison's responses, and Plaintiff's  
27 written objections to the grievance denials. While the grievances  
28 assert the denial of medical care, they similarly do not explain how the  
individually-named Defendants were involved in the violation of  
Plaintiff's constitutional rights.

1 constitutional violation. Wood v. Housewright, 900 F.2d 1332, 1334 (9th  
2 Cir. 1990).

3  
4 While Plaintiff generally alleges that he was denied medical care  
5 for three months in the SHU, he fails to include any specific  
6 allegations showing how each individual Defendant was directly and  
7 personally involved in the alleged constitutional violations. Nor does  
8 Plaintiff explain how each Defendant's action or inaction caused the  
9 harm suffered. Plaintiff must allege specific facts showing that each  
10 individual Defendant knew of Plaintiff's serious medical needs but  
11 deliberately denied Plaintiff medical care despite that knowledge, and  
12 explaining how each Defendant's action or inaction directly caused  
13 Plaintiff harm. Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011).  
14 Accordingly, Plaintiff's claim for deliberate indifference is dismissed,  
15 with leave to amend.

16  
17 **B. The Complaint Fails To State A Claim To The Extent that Plaintiff**  
18 **Alleges A Right To A Particular Grievance Procedure Or Outcome**  
19

20 The majority of Plaintiff's Complaint consists of exhibits relating  
21 to his administrative grievances. It is unclear whether Plaintiff is  
22 attempting to assert a claim based on the denial of these grievances.  
23 Plaintiff is advised, however, that any such claim fails because a  
24 prisoner has no right to a particular grievance procedure or outcome.  
25 Even though a prisoner must "exhaust his administrative remedies before  
26 filing a lawsuit concerning prison conditions," Sapp v. Kimbrell, 623  
27 F.3d 813, 821 (9th Cir. 2010) (citing 42 U.S.C. § 1997e(a)), the denial  
28 of a grievance, without more, is insufficient to establish liability.

1 See Shehee v. Luttrell, 199 F.3d 295, 300 (6th Cir. 1999).  
2 Additionally, there is no constitutional right to a particular grievance  
3 process. Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S.  
4 119, 130 n.6, 97 S. Ct. 2532, 53 L. Ed. 2d 620 (1977); Mann v. Adams,  
5 855 F.2d 639 (9th Cir. 1988). Accordingly, to the extent that Plaintiff  
6 is attempting to assert a claim based on the denial of his grievances,  
7 the Complaint must be dismissed, with leave to amend. Plaintiff is  
8 cautioned that in any Amended Complaint, he must correct any  
9 deficiencies or omit the deficient claim.

#### 10 11 IV.

#### 12 CONCLUSION

13  
14 For the reasons stated above, the Complaint is dismissed with leave  
15 to amend. If Plaintiff still wishes to pursue this action, he is  
16 granted **thirty (30) days** from the date of this Memorandum and Order to  
17 file a First Amended Complaint. In any amended complaint, the Plaintiff  
18 shall **cure the defects** described above. The First Amended Complaint, if  
19 any, shall be complete in itself and shall bear both the designation  
20 "First Amended Complaint" and the case number assigned to this action.  
21 It shall not refer in any manner to the original Complaint. Plaintiff  
22 shall limit his action only to those Defendants who are properly named  
23 in such a complaint, by first and last name to the extent possible,  
24 consistent with the authorities discussed above.

25  
26 In any amended complaint, Plaintiff should confine his allegations  
27 to those operative facts supporting each of his claims. Plaintiff is  
28 advised that pursuant to Federal Rule of Civil Procedure 8(a), all that

1 is required is a "short and plain statement of the claim showing that  
2 the pleader is entitled to relief." **Plaintiff is strongly encouraged to**  
3 **utilize the standard civil rights complaint form when filing any amended**  
4 **complaint, a copy of which is attached.** In any amended complaint, the  
5 Plaintiff should make clear the nature and grounds for each claim and  
6 specifically identify the defendants he maintains are liable for that  
7 claim. In addition, each page of the First Amended Complaint must be  
8 legible and consecutively numbered.

9  
10 **Plaintiff is explicitly cautioned that failure to timely file a**  
11 **First Amended Complaint, or failure to correct the deficiencies**  
12 **described above, will result in a recommendation that this action be**  
13 **dismissed with prejudice for failure to prosecute and obey Court orders**  
14 **pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff is further**  
15 **advised that if he no longer wishes to pursue this action, he may**  
16 **voluntarily dismiss it by filing a Notice of Dismissal in accordance**  
17 **with Federal Rule of Civil Procedure 41(a)(1). A form Notice of**  
18 **Dismissal is attached for Plaintiff's convenience.**

19  
20  
21 DATED: September 6, 2012

22 /S/

23 SUZANNE H. SEGAL  
24 UNITED STATES MAGISTRATE JUDGE

25  
26 **THIS MEMORANDUM IS NOT INTENDED FOR PUBLICATION NOR IS IT INTENDED TO BE**  
27 **INCLUDED IN OR SUBMITTED TO ANY ONLINE SERVICE SUCH AS WESTLAW OR LEXIS.**